

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2022

Public Authority: Durham Constabulary

Address: Police Headquarters
Aykley Heads
Durham
DH1 5TT

Decision (including any steps ordered)

1. The complainant has requested information from Durham Constabulary relating to an arrest which took place in 2012. Durham Constabulary first sought to apply section 40(5B) to neither confirm nor deny that the information was held, however it later changed its approach and stated that the requested information was not held.
2. The Commissioner's decision is that Durham Constabulary does not, on the balance of probabilities, hold the requested information.
3. Therefore the Commissioner requires no steps to be taken.

Request and response

4. On 18 May 2021 the complainant wrote to Durham Constabulary and requested information in the following terms:

"A copy of the raw custody suite CCTV footage from X's arrest in 2012 at Peterlee Police Station."
5. Durham Constabulary responded on 21 May 2021 and sought to apply section 40(5B) of FOIA to the requested information.

6. Following an internal review Durham Constabulary wrote to the complainant on 7 July 2021, stating that it was overturning its original decision. Instead it stated that it did not hold the requested information.

Scope of the case

7. The complainant first contacted the Commissioner on 28 May 2021 to complain about the way his request for information had been handled.
8. After seeing Durham Constabulary's internal review response the Commissioner contacted the complainant to see if he was satisfied that the information was not held. The complainant stated that he wished to proceed with his complaint.
9. The Commissioner has considered Durham Constabulary's handling of the complainant's request, in particular he has considered whether the requested information is held.

Reasons for decision

Section 1 – Determining whether further information is held

10. Section 1 of the FOIA states that:

"Any person making a request for information to a public authority is entitled – (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him."

11. In this case, the complainant disputes Durham Constabulary's position that it does not hold the information sought in his information request of 18 May 2021.
12. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request.

13. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by Durham Constabulary to check whether the information is held and any other reasons offered by Durham Constabulary to explain why the information is not held. In addition, he will consider any reason why it is inherently likely or unlikely that the requested information is not held.
14. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
15. As part of his investigation, the Commissioner wrote to Durham Constabulary requesting its submissions in respect of a number of questions relating to the complainant's view that it should hold the requested information. The Commissioner's questions were focused on Durham Constabulary's endeavours in searching for the requested information, and whether any information falling within the scope of the requests was deleted or destroyed.
16. Durham Constabulary informed the Commissioner that the requested information, i.e. CCTV custody suite footage, was captured and originally held at Peterlee Police Station custody suite. This footage would have been originally held in an unredacted format. The footage would have then been transferred in the same format to the Professional Standards Department, and then disclosed onwards to the Independent Police Complaints Commission (IPCC), as the IPCC were responsible for the subsequent criminal investigation and associated complaint. No other information relevant to the scope of the request was ever held by Durham Constabulary.
17. Durham Constabulary also informed the Commissioner that the June and July 2021 comprehensive and substantial searches (with relevant search terms used), that were undertaken across its nine separate business areas have not located the requested information. Durham Constabulary provided the Commissioner with summaries of those searches and evidence that they did not locate the requested information.
18. Durham Constabulary informed the Commissioner that if the footage were held, it would be held manually on a disk, following the download from the Peterlee custody suite system hard drives. Relevant searches for this disk were undertaken and no footage, unredacted or redacted was located. Durham Constabulary also informed the Commissioner that it had no statutory requirement or business purpose to retain the requested information. It provided the Commissioner with a full history of the case to which the requested information relates.

The Commissioner's Conclusion

19. The Commissioner has examined the submissions of both parties. He has considered the searches carried out by Durham Constabulary and its explanations as to why the requested information could not be located. The Commissioner is aware that the case to which the requested information relates is now over 10 years old and was fully closed by Durham Constabulary in October 2014. He is satisfied that every possible avenue has been explored in an effort to locate any footage that may have been retained.
20. The Commissioner's role is to make a decision based on whether on the balance of probabilities relevant recorded information is held by Durham Constabulary.
21. The Commissioner appreciates that the complainant considers that Durham Constabulary should hold the requested information. However, it is not for the Commissioner to judge whether information should be held, but to decide on the balance of probabilities whether it actually is held.
22. In the absence of evidence to the contrary, the Commissioner is satisfied that Durham Constabulary has provided plausible and convincing explanations that it has carried out the necessary steps to conclude whether it held the information requested by the complainant. Therefore, the Commissioner concludes that, on the balance of probabilities, the requested information is not held by Durham Constabulary.

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF